IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 736 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAGDISH @ JAGGA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 736 of 1994
MS BANNA S DUTTA with Ms. Bharti H. Rana
for the appellant
S.S.Patel, APP, for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 18/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. Appellant, original accused No.1, by filing this appeal under Section 374(2) of the Code of Criminal Procedure, has challenged the judgment and order dated July 20, 1994, passed by the learned Additional Sessions Judge, Court No. VIII, Ahmedabad City, in Sessions Case No.141 of 1993, by which judgment and order, the appellant was convicted under Section 302 of the Indian Penal Code, and sentenced to undergo R.I. for life, and

fine of Rs.500 in default R.I. for five months.

2. The prosecution case, in a nut-shell, is as under: Complainant, P.W.1, Vidyaben, was residing with her husband, Manilal, (since deceased), near Ankur School Compound, Ramswarup-ni-chawl, Satyanarayan Nagar, Amraiwadi, Ahmedabad. The deceased husband of the complainant was serving at a petrol pump in Amdupura area and his service timing was from 7.a.m. to 5.30 p.m. One son of the complainant, namely, Bhavanidas, was staying in the joint family along with his wife Sumandeviben (PW 2). In the neighbourhood of the house of the complainant, the appellant was staying with his wife, Arunadevi and mother-in-law, Jaydeviben. Frequent quarrels used to take place as the wife of the appellant, Arunadevi, accused No.2 used to throw dirty water on the way of the deceased and was creating nuisance. On October 15, 1992, deceased Manilal, after returning from his work, had taken dinner and had gone out of the house. The complainant, P.W.1, Vidyaben, at that time, was watching television whereas P.W.2, Sumandevi, daughter-in-law of P.W.1, was taking dinner in the T.V. Room. When the deceased came out of his house, the wife of the appellant had thrown dirty water outside her house which was the daily route of the deceased causing nuisance and annoyance to the deceased. Thereupon, a quarrel had taken place between the wife of the appellant and the deceased. Due to raising of shouts by the appellant, his wife, his mother-in-law and the deceased, the complainant, P.W.1, Vidyaben, had come out of her house. She had seen that the appellant had gone to his house, brought a knife, and had given a blow with it on the chest of the deceased. The complainant had also seen that the appellant had also given three/four successive blows with the knife on other parts of the body of the deceased. When the complainant had tried to rescue her deceased husband, the wife of the appellant, Arunadevi and the mother-in-law of the appellant, Jaydeviben, had caught hold of her. When the complainant had raised shouts to save her deceased husband, the wife and the mother-in-law of the appellant had thrown her on the ground with the result the complainant had sustained injuries on her right hand. After inflicting knife blows on the deceased and after causing injuries to the complainant, the appellant, the wife of the appellant, Arunadevi, and the mother-in-law of the appellant, Jaydeviben, had locked their house and had run away from that place. The deceased was bleeding profusely due to serious injuries sustained by him and, therefore, he was removed in an auto-rickshaw to the L.G. Hospital. The complainant had also accompanied the deceased in the said

auto-rickshaw. The Doctor on duty at the L.G. Hospital, on examination of the deceased, had declared him dead. The Duty Constable at the L.G. Hospital had informed Amraiwadi Police Station about the deceased having been brought to the hospital in a serious condition. P.W.7, PSI, Jadeja, who was present at Amraiwadi Police Station, had, on receipt of the information from the Duty Constable posted at the L.G. Hospital, rushed to the hospital and recorded the complaint around 9.10 p.m. on October 15, 1992. The said complaint was registered at CR No.I-1103/92 of Amraiwadi Police Station for the offences under Sections 302, 323,114 of the Indian Penal Code and Section 135(1) of the Bombay Police Act, against the appellant and the wife of the appellant, Arunadevi, and the mother-in-law of the appellant, Jaydeviben. P.W.7, PSI, Jadeja, had, thereafter, held inquest of the body of the deceased and had sent the body for autopsy. P.W.11, Dr. D.G. Desai, Associate Professor in the Civil Hospital, Ahmedabad,had performed autopsy on October 16, 1992 between 11 a.m. and 12 noon. The investigation of C.R. no.1103/92 was handed over to PW 9, PI. N.R. Patel, of Amraiwadi Police Station. P.W.9, PI. N.R. Patel had carried out search of the appellant and two other accused but they were not found at their house as the house was locked and the appellant and other two accused had absconded after the incident. On October 16, 1992, Police Constable, Jaideep Singh, had produced clothes put on by the deceased at the time of the incident, which were seized under a panchanama. PW 9, PI. N.R. Patel had recorded statements of witnesses and had drawn panchanama of the place of the incident. While drawing panchanama of the place of the incident, sample earth as well as blood soiled earth, sheath of knife, two broken buttons and other incriminating articles were seized from the place of the incident. On October 19, 1992, the original accused No.3, mother-in-law of the appellant,was arrested. On October 5,1992, the appellant and his wife, Arunadevi, original accused No.2, had surrendered themselves before the Police Station and, therefore, they were arrested under an arrest panchanama. While the appellant was in custody, he had shown his willingness to produce muddamal knife with which he had inflicted injuries on the deceased. The said muddamal knife was recovered in the presence of two independent panchas under a panchanama drawn under Section 27 of the Evidence Act. The said muddamal knife was having blood stains. While the appellant was in custody, he had shown his willingness to produce the clothes put on by him at the time of the incident. The said clothes put on by the appellant were recovered under a panchanama from the shop of one tailor situated at Magan Kumbhar's Chawl. Out of

the said clothes, one shirt recovered was found without two buttons. The said shirt was having blood stains and, therefore, the clothes alleged to have been put on by the appellant at the time of commission of offence were also recovered and seized under a panchanama. On November 27, 1992, PW 9, PI. Patel, had sent all the incriminating articles to the Forensic Science Laboratory ('FSL' for short). P.W.9, PI, Patel, had obtained injury certificate of P.W.1, Vidyaben, and injury certificate of the deceased from the L.G. Hospital, as well as the post-mortem notes from the Civil Hospital. On receipt the report from the FSL, and on completion of the investigation, PW 9, PI, Patel, had filed chargesheet in the Court of learned Metropolitan Magistrate, Court No.7, Ahmedabad, against the appellant and two other accused, namely, Arunadevi and Jaydeviben, for the offences punishable under Sections 302, 323, 114 of the Indian Penal Code and Section 135 of the Bombay Police Act. The said chargesheet came to be registered as Criminal Case No.184 of 1992. As the offence under Section 302 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate, Court No.7, Ahmedabad, by order dated April 30, 1993, committed the case to the Court of City Sessions, Ahmedabad, for trial, where it came to be numbered as Sessions Case No.141 of 1993.

3. Charge Exh.2 was framed against the appellant for the offences punishable under Section 302 of the Indian Penal Code and under Section 135 of the Bombay Police Act. The original accused Nos. 2 and 3 were charged for having caused simple injuries to P.W.1, Vidyaben, for the offence punishable under Section 323 read with Section 114 of the Indian Penal Code. The charge was read over and explained to the appellant and other two accused wherein they pleaded not guilty and claimed to be tried. In order to prove charges against the appellant, the prosecution examined the following witnesses. (1) P.W.1, Vidyaben Banesh, Exh.11; (2) P.W.2, Sumandevi Bhavanidas, Exh.13; (3) P.W.3, Manharsinh Popatsinh Vaghela, Exh.14; (4) P.W.4, Hasmukhbhai Shanubhai, Exh.17; (5) P.W.5, Rajjansinh alias Rupsinh Chauhan, Exh.18; (6) P.W.6, Narayan Babulal Koshti, Exh.22; (7) P.W.7, PSI, J.J. Jadeja, Exh.27; (8) Panch Sohanlal Ambalal, Exh.30; (9) P.W.9, PI, N.R. Patel, Exh.32; (10) P.W.10, Dr. K.D. Patel, Exh.41 and (11) P.W.11, Dr. D.G. Desai, Exh.46. The prosecution also produced documentary evidence such as First Information Report, Exh.12, inquest panchanama, Exh.19, panchanama of clothes of the deceased, Exh.20, panchanama of place of incident, Exh, 26, yadi received from the L.G. Hospital, Exh.28, discovery panchanama of

muddamal knife Exh.33, panchanama of clothes put on by the appellant at the time of the incident, exh.34, forwarding letter sent to the FSL Ex.35, report of the FSL Exh.37, map of place of the incident Exh.39, medical certificate of the deceased Exh.42, injury certificate of P.W.1, Vidyaben, Exh.43, post-mortem notes Ex.47, etc, to prove the case against the appellant and other two accused. After recording of the evidence of the prosecution witnesses was over, the appellant and other two accused were questioned generally and their statements came to be recorded under Section 313 of the Code of Criminal Procedure. In the further statement, the defence of the appellant and other two accused is of general denial. No defence witness was examined by the appellant and other two accused.

4. The learned Additional Sessions Judge, on appreciation of oral as well as documentary evidence, and after hearing the arguments of the learned Additional Public Prosecutor and the learned counsel for the defence, held that the prosecution had proved beyond doubt that deceased Manilal had died homicidal death on October 15, 1992. It was further deduced that the evidence of P.W.1, Vidyaben, and P.W.2, Sumandevi, had clearly proved that they had witnessed the occurrence of the incident wherein the appellant had inflicted knife blows on the vital parts of the body of the deceased which had caused his death. It was deduced that the oral testimony of P.W.1, Vidyaben, and P.W.2, Sumandevi, were reliable and trustworthy and their presence at the scene of the incident was natural. The learned Additional Sessions Judge, further, held that the prosecution had proved the case against the appellant by proving the following circumstances, which were over and above the oral testimony of the eye-witnesses:

(i) The accused are known persons to the family of the deceased being neighbours and the cause of quarrel was with regard to pouring of water on the road;
(ii) The accused had run away after locking their house as deposed by the eye witnesses and the accused were not traced out by the Investigating Officer, Shri Jadeja, till 5.11.1992, i.e. for nearly 20 days after the date of incident and they had surrendered to the police station on that day;
(iii) Recovery of the muddamal knife which was having blood stains at the instance of the accused No.1 which was duly proved by the panch witness Manharsinh Popatsinh Vaghela Exh.14; (iv) Considering the report of F.S.L.Exh.37, the blood group on the muddamal knife which was recovered at

the instance of the accused no.1 is similar to the blood group of the deceased Manilal as seen from the bloodstained clothes of the deceased.

(v) Recovery of bloodstained earth at the place of offence along with the sheath of the knife and 2 broken white buttons which were of the bushshirt which were recovered at the instance of accused No.1 on 8.11.1992, as deposed by Police Inspector Shri N.R. Patel.

(vi) The evidence of Dr.D.G. Desai, Exh.46, who performed the post-mortem note Exh.47 in which there were stab injuries which are possible by the muddamal knife and injuries Nos. 1 and 2 were sufficient in the ordinary course of nature to cause death.

(vii) Dr. K.D. Patel, Exh.41, had also examined the deceased Manilal in the first instance and had found several incised wounds which were found on the body of deceased Manilal which were possible by sharp cutting instrument like muddamal knife and also gave certificate Exh.42 accordingly. He also examined Vidyaben who had simple injuries as seen from the medical certificate Exh45.

(viii) Immediate disclosure and identification of the accused as seen from the vardhy Exh, 38 and immediate complaint by the widow of the deceased within few hours of the incident on 15.10.1992 in which the names of the accused are clearly mentioned.

On the basis of the abovereferred to conclusions, the learned Additional Sessions Judge, by the impugned judgment and order, convicted the appellant under Section 302 of the Indian Penal Code, and sentenced him to undergo R.I. for life, and fine of Rs.500 in default R.I. for five months, which has given rise to filing of the present appeal. However, the learned Additional Sessions Judge has acquitted the appellant of the charge under Section 135 of the Bombay Police Act.

4.1 The original accused Nos. 2 and 3, who are wife and mother-in-law of the appellant, were convicted under Section 323 read with Section 114 of the Indian Penal Code and both of them were sentenced to undergo S.I.for 15 days and fine of Rs.100 each in default S.I. for seven days. It appears that no appeal was filed by the original accused Nos. 2 and 3 against their conviction and sentence imposed on them.

5. Learned advocate, Ms. Banna Datta assisted by Ms.Bharti H. Rana and learned Additional Public

Prosecutor, Mr. S.S. Patel, have taken us through the entire record and proceedings of the appeal.

6. We have carefully examined the record and proceedings and reappreciated oral as well as documentary evidence, and have heard the submissions of the learned advocate for the appellant and learned Additional Public Prosecutor for the respondent.

7. It is submitted by the learned advocate for the appellant that:

(i) the ocular evidence of the eye-witnesses was inconsistence with the medical evidence of Dr. Desai, who had performed post-mortem of the dead body of the deceased Manilal;
(ii) the evidence of the eye-witnesses was inconsistent with each other which had raised serious doubt about their presence at the time of commission of offence;
(iii) there was no sufficient light to identify the appellant and other accused persons alleged to have been caused murder of the deceased;
(iv) the identity of the assailant was in serious doubt and it is a clear case of mis-identity;
(v) the statement of P.W.2, Sumandevi, was recorded on the next day which also raised serious doubt about her presence at the time of commission of offence and she was a got-up eye-witness;
(vi) there was delay in lodging the First Information Report in as much as the incident had taken place at 7.45 p.m. whereas the First Information Report was lodged at 9.10 p.m. on October 15, 1992;
(vii) in the nearby locality of the place of the incident, there was a big chawl and no independent witness was examined;

It is submitted, in the alternative, that the appellant had no intention to cause death of the deceased and there was no premeditation to cause death of the deceased. The incident had happened due to a sudden quarrel. In support of the above submissions, the learned advocate for the appellant has placed reliance on the decisions of the Supreme Court (i) in the case of Hem Raj vs. The State (Delhi Administration), reported in AIR 1990 Supreme Court 2252; and (ii) in the case of Surinder Kumar vs. Union Territory, Chandigarh, reported in AIR 1989 Supreme Court 1094. It is, therefore, submitted by the learned advocate for the appellant that the conviction be suitably altered under Section 304 Part I or Part II of the Indian Penal Code and the sentence be reduced accordingly.

8. On the other hand, learned APP, Mr. S.S. Patel, has vehemently submitted that (i) there was no inconsistency in the ocular and the medical evidence and the oral testimony of the eye-witnesses was most natural and they were trustworthy and reliable; (ii) the appellant and other accused were neighbours of P.W.1, Vidyaben, and they were known to each other and, therefore, there is no question of mistaken identity; and (iii) the incident in question had taken place around 7.45 p.m. on October 15, 1992 near the house of the appellant as well as the house of the complaint and both the houses were having electricity and there was sufficient light coming from their houses which had given enough light to identify the appellant and two other accused persons. The learned APP has submitted that the prosecution had proved beyond doubt the case against the appellant and, therefore, the appeal be dismissed and the conviction and the sentence be confirmed.

9. The evidence of P.W.10, Dr. K.D. Patel, who had first examined the deceased at the L.G. Hospital, Ahmedabad, indicated that the deceased had sustained multiple wounds all over the body, as under:

"(i) Incised wound about 5 x 2 cm with protrusion of Omentum in G.P. Sternum region;

(ii) Incised wound of 6 x 3 cm left anterior chest wall infra memory region;

(iii) Stab wound of 4 x 1 cm on right anterior medical aspect of right leg;

(iv) Stab wound about 3 x 1 cm on the right calf region;

(v) Abrasion about 3 x 1 cm on right medial aspect of thigh;

(vi) Stab wound on right first webspace, to 4th webspace about 9 x 3 cm.

(vii) Stab wound about 5 x 1 cm on left linear aspect forearm;

(viii) Avulse injury with skin deep about 6 x 4 cm on left zygmatic region."

The evidence of P.W.10, Dr. K.D. Patel, is fully corroborated by the oral testimony of p.W.11, Dr. D.G. Desai, who had performed post-mortem of the dead body of the deceased Manilal. According to the post-mortem notes Exh.47, the deceased had sustained the following external injuries.

"1. Stab injury on the left side of chest at 7th intercostal space, transverse at nipple level. Size 5. 5 cm internal tissue coming out of this wound. Medial end is sharp shile lateral end is ecchymosed. Both edges are sharp and red in colour.

2. Stab injury in the mid line of chest just about

the xymph sternum, transverse, intestine are coming out. Size 3 cm Medial end is sharp, laternal left end is ecchymosed. Both edges are sharp and red.
3. Incession wound on the right palm from little finger to thumb muscle deep.
4. C.L.W. on the left zygona 3 x 3 xm
5. Abrasion on the left clevicle 6 x 1 cm
6. Stab injury on the posterior aspect of left forearm M/3, verticle, upper end is ecchymosed while lower end is sharp. Both the edges are sharp and red in colour.
7. Stab injury on the medial aspect of upper 3rd of right leg. size 3 cm verticle, upper end is sharp while lower end is ecchymosed. Both the edges are sharp and red.
8. Stab injury on the front of right leg just below knee, size 4 cm. verticle, upper end sharp lower end ecchymosed. Both edges red and sharp.
9. Stab on the left posterior axillary line at level of umbilicus, 3 cm verticle, upper end sharp, lower end ecchymosed. Both edges are sharp and red.
10. Linear abrasion on right scapuler region, 18 x 0.2 cm. All the above injuries are ante mortem in nature."

According to P.W.11, Dr. D.G.Desai, the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death. In view of the oral testimony of two Doctors, namely, P.W.10, Dr. K.D. Patel, and P.W.11, Dr.D.G. Desai, and the post-mortem notes Exh.47, we are of the view that the prosecution had proved beyond doubt that deceased Manilal had died homicidal death on October 15, 1992, and the finding of the learned Additional Sessions Judge, to that effect, deserves to be confirmed.

10. It is an admitted fact that the appellant, along with his wife and mother-in-law, was residing just opposite the house of the deceased Manilal. The evidence of the two eye-witnesses had proved that the wife of the appellant, namely, Arunadevi, was in the habit of throwing dirty water on the way which was used by the deceased Manilal for going out from the locality, which had caused a great nuisance and annoyance to the deceased, due to which there used to be quarrels between the deceased and the family members of the appellant. The appellant and his family members had come to reside opposite the house of the deceased prior to 10 months of the date of the incident. The family members of both the deceased as well as the appellant - were, therefore, known to each other and there was no question of mistaken identity. On the day of the incident, the deceased, after returning from his work, had taken dinner around 7.30 p.m. and had gone out of his house for a stroll. When the deceased had come

out of the house, he had found that the wife of the appellant was throwing dirty water on his way. A huge quarrel had taken place between the deceased and the family members of the appellant. Due to raising of shouts by the deceased and the family members of the appellant, P.W.1, Vidyaben, who was watching television in her house, had come out. P.W.2, Sumantidevi, who is the daughter-in-law of the deceased, and who was taking her dinner in the T.V. room, had also come out. In the meantime, the appellant, with a view to take revenge, and to bring an end to the quarrels which were going on since months, had gone inside his house and brought knife to inflict injuries on the deceased. The appellant had overpowered the deceased and inflicted successive and forceful blows with the knife on the chest and other vital parts of the body of the deceased, with the result the deceased had fallen down in profuse bleeding condition. P.W.1, Vidyaben, had tried to come to the rescue of the deceased and she was caught hold by the wife and the mother-in-law of the appellant. When P.W.1, Vidyaben, had tried to use the force to get out of the clutches of the two women, she was thrown on the ground and had sustained injuries. After falling on the ground, P.W.1, Vidyaben, had become unconscious. After inflicting the knife blows on the deceased and after P.W.1, Vidyaben, had fallen down, two ladies, i.e. wife and mother-in-law of the appellant, and the appellant, had locked their house and had run away from the place of the incident.

10.1 P.W.1, Vidyaben, and P.W.2, Sumandevi, were searchingly cross examined, but nothing was brought in their cross examination so as to dislodge their testimony in the examination-in-chief. With regard to sufficiency of light at the place of the incident, P.W.1, Vidyaben, had deposed that there was no street light in the locality where her house was situated, but, there was sufficient light coming from the house of the appellant as well as her own house. She had also deposed that there were about 350 rooms in Ramswarup-ni-chawl, and those rooms were having the facility of electricity. Therefore, in our view, there was sufficient light near the place of the incident so as to witness the occurrence of the incident wherein the appellant and his wife and mother-in-law, who were known to the witness, had taken active part in the occurrence of the incident. In view of the oral testimony of P.W.1, Vidyaben, there is no merit in the submission of the learned advocate for the appellant that there was no sufficient light to identify the appellant and other accused persons alleged to have been caused murder of the deceased. It may also be mentioned that no major contradictions were found in the testimony of two

eye-witnesses so as to raise any doubts about their presence at the place of incident. We do not find any infirmity or inconsistency in the evidence of two eye-witnesses and both had deposed in a most natural manner. In our opinion, the evidence of two eye-witnesses is trust-worthy and reliable, and the learned Additional Sessions Judge had committed no error in placing reliance on the said testimony.

10.2 P.W.1, Vidyaben, had deposed that the appellant, after the quarrel had taken place between the deceased and the family members of the appellant, had gone to his house and brought the knife with which he had inflicted blows on the chest and other vital parts of the body of the deceased. The oral testimony of P.W.1, Vidyaben, coupled with the oral testimony of P.W.2, Sumandevi, is fully corroborated by the medical evidence in the nature of oral testimony of P.W.10, Dr. K.D. Patel, and P.W.11, Dr. D.G. Desai. P.W.1, Vidyaben, had categorically deposed that the appellant had inflicted knife blows on the chest and vital organs of the body of the deceased which had resulted into profuse bleeding which ultimately caused his death. Injuries sustained on the chest and other parts of the body of the deceased as described by the eye-witnesses in their oral testimony were consistent with the external injuries mentioned in the post-mortem notes Exh.47. The evidence of P.W.11, Dr. D.G. Desai, had fully corroborated the oral testimony of P.W.1, Vidyaben, in as much as the Doctor who had performed the post-mortem had deposed that the external injuries found on the body of the deceased had corresponded with the internal injuries that the said injuries were possible by infliction of muddamal knife blows. Therefore, we do not find any merit in the submission of the learned counsel for the appellant that the oral testimony was inconsistent with the medical evidence.

11. The other circumstance which corroborated the oral testimony of the witnesses was that, as per the report of the FSL, Exh.37, the blood-group of the deceased was "A". The blood stains which were found on the clothes of the deceased as well as on the clothes of the appellant were of the same blood group "A". The blood which was found on the muddamal knife was also of Group "A" which also lends corroboration to the case of prosecution that the appellant had caused injuries with the muddamal knife on the deceased. Two buttons which were found from the place of the incident had also corroborated the case of the prosecution that said two buttons had got torn from the bush-shirt put on by the appellant during the assault launched by the appellant on the deceased. The

bush-shirt, which was recovered at the instance of the appellant, was found without two buttons which were got torn from the bush-shirt of the appellant during the scuffle. The above circumstance also lends corroboration to the case of the prosecution that the appellant had participated in inflicting blows with the muddamal knife on the vital parts of the body of the deceased which had caused his death instantaneously. The appellant had acted in a most cruel manner and had selected vital parts of the body of the deceased for inflicting the knife blows taking advantage of the situation that the deceased was unarmed. The injuries which were sustained due to infliction of knife blows were sufficient in the ordinary course of nature to cause the death of the deceased.

12. Alternately, it was argued by the learned counsel for the appellant that the appellant had no intention to cause death of the deceased and there was no premeditation to cause death of the deceased. That, the incident had happened due to sudden quarrel. The learned counsel for the appellant, in support of her submission that the present case would fall either under Part I or under Part II of Section 304 and not under Section 302 of the Indian Penal Code, has placed reliance on the decision of the Supreme Court in the case of Hem Raj vs. The State (Delhi Administration), reported in AIR 1990 Supreme Court 2252.

12.1 The principles laid down in the decision of the Supreme Court in the case of Hem Raj (supra), in our view, will not apply to the facts of the present case. In the case before the Supreme Court, occurrence had happened in a spur of moment and in heat of passion upon sudden quarrel and there was no premeditation, nor any intention to cause death or to cause fatal injury could be imputed against the accused. In the present case, quarrels had taken place time and again between the deceased and the family members of the appellant due to throwing of dirty water on the way of the deceased. In the night of the incident also, such quarrel had taken place and the appellant with intention to cause death had brought deadly weapon knife from his house and had caused injuries on the vital organs of the body of the deceased. From the above facts, the intention to cause murder of the deceased can be imputed against the appellant. The appellant with calculated design to finish the deceased had inflicted successive knife blows on the chest and other vital parts of the body of the deceased. Therefore, in our opinion, the present case would fall under Section 302 of the Indian Penal Code and not under Part I or Part II of Section 304 of the Indian Penal Code.

12.2 The learned counsel for the appellant has also placed reliance on the decision of the Supreme Court in the case of Surinder Kumar vs. Union Territory, Chandigarh, reported in AIR 1989 Supreme Court 1094. In the case before the Supreme Court, a sudden quarrel had taken place and because of that the accused had caused injuries to the deceased and looking to the manner in which the injuries were inflicted the Supreme Court held that it cannot be said that the accused has acted cruelly. In view of the facts of the said case, the Supreme Court convicted the accused under Section 304 Part I of the Indian Penal Code. We are afraid, the decision of the Supreme Court in the case of Surinder Kumar (supra) will not be applicable to the facts of the present case. As indicated above, the appellant with an evil design to fulfil his intention had brought knife from his house and inflicted successive blows on the chest and other vital organs of the body of the deceased. The appellant had acted in a most cruel manner and had inflicted injuries on the deceased who was unarmed. In the above fact-situation of the present case, the principle laid down by the Supreme Court in the case of Surinder Kumar (supra) will not be applicable to the facts of the present case. As stated above, the case of the appellant would not fall either under Part I or under Part II of Section 304.

13. In our view, the facts and circumstances narrated hereinabove will not bring the case within the exceptions of Section 300 of the Indian Penal Code. This was not a sudden quarrel and the appellant with intention to cause death of the deceased, had gone inside his house after a heated altercation, and brought deadly weapon like knife. The deceased was unarmed and the appellant had taken undue advantage of the situation and inflicted successive knife blows on the body of the deceased by selecting vital organs. There cannot be any manner of doubt that there was clear intention on the part of the appellant to cause death of the deceased. In our view, the present case would not fall within any of the exceptions of Section 300 of the Indian Penal Code, as submitted by the learned counsel for the appellant. Therefore, the conviction under Section 302 of the Indian Penal Code, recorded by the learned Additional Sessions Judge, Court No. VIII, Ahmedabad City, in Sessions Case No.141 of 1993, deserves to be confirmed. Consequently, the sentence imposed on the appellant to undergo R.I. for life and fine of Rs.500 in default S.I. for 15 days also deserves to be upheld.

14. As a result of foregoing discussion, the appeal fails and is dismissed. The conviction of the appellant under Section 302 of the Indian Penal Code, and sentence imposed on him to undergo R.I. for life and fine of

Rs.500 in default S.I.for 15 days, recorded by the learned Sessions Additional Judge, Court No. VIII, Ahmedabad City, in Sessions Case No.141 of 1993, are hereby confirmed. The muddamal be destroyed in terms of the direction given by the learned Additional Sessions Judge in the impugned judgment.

(M.H. Kadri, J.)

(Akshay H. Mehta, J.)

(swamy)